THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION Nos : 19906, 19907, 19908 and 19909 of 1996

% 29.08.2005

W.P.No.19906 of 1996

Between:

Smt Munganda Venkataratnam.

..Petitioner.

And

The Joint Collector, West Godavari District, Eluru and another.

..Respondents.

W.P.NO.19907 OF 1996

Between:

S. Tulasirao.

..Petitioner.

And

The Joint Collector, West Godavari District, Eluru and another.

..Respondents.

W.P.NO.19908 OF 1996

Between:

Tumma Venkataratnam.

..Petitioner.

And

The Joint Collector, West Godavari District, Eluru and another.

..Respondents.

Counsel for the Petitioners: **MR.D.V.N.ACHARYA.**

Counsel for the Respondents: **GP FOR ASSIGNMENT**

< Gist:

- Head Note:

? Cases referred:

1991(1) ALT 617

1996(1) ALT 672

1994(1) APLJ 6 (SN)

1978(1) ALT 10

1975(2) AnWR 122

2005(6) SCC 149

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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Dated: 29-08-2005

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W.P.NO.19908 OF 1996

Between:

Tumma Venkataratnam.

..Petitioner.

And

The Joint Collector, West Godavari District, Eluru and another.

..Respondents.

W.P.NO.19909 OF 1996

Between:

Mukkamala Subbarao.

..Petitioner.

And

The Joint Collector, West Godavari District, Eluru and another.

..Respondents.

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION Nos : 19906, 19907, 19908 and 19909 of 1996

COMMON ORDER:

Since all these petitions are filed questioning the observation made by the Joint collector, West Godavari District (1st respondent in all the petitions) in his order dated 5-6-2000 passed in an appeal filed by the petitioners in these petitions jointly as appeal No.1573 of 1999, these petitions are being disposed of by a common Order. W.P.No.19906 of 2000 is filed by M.Venkataratnam, W.P.No.19907 of 2000 is filed by S.Tulasi Rao, W.P.No.19908 of 2000 is filed by T.Venkataratnam, and W.P.No.19909 of 2000 is filed by M.Subba Rao, who, according to the record, are interrelated. Though they jointly filed an appeal before the Collector, they for their own reasons, filed these petitions separately on the same day.

2. The undisputed facts in these petitions are, on a representation submitted to him by S.L.Satyanarayana of Chintalapudi, alleging that his brother S. Tulasi Rao, (petitioner in W.P.19907 of 2000), a retired Tahsildar, had obtained *benami* pattas in the names of his relatives in respect of Ac:18-69 cents in various S.No., at Chintalapudi and is enjoying the said land, those pattas may be cancelled and the land in his possession may be assigned to the persons eligible for assignment, the Collector, West Godavari District, called for a report from the Revenue Divisional Officer, who in turn gave a direction to the Mandal Revenue Officer, Chintalapudi (second respondent) to conduct an enquiry and submit a report. By his report dated 31.3.1998 second respondent reported that S.Tulasi Rao, while working in various capacities in the erstwhile Chintalapudi Taluq, managed to obtain *benami* pattas in favour of Tumma Venkataratnam (Petitioner in W.P.No.19908 of 2000), Mukkamala Eswaramma (Petitioner in W.P.No.19909 of 2000 is claiming to be a legatee of the land assigned to the said Eswaramma as per the will dated 27-10-1963 of Eswaramma), Sriramula Satyanarayana (S. Tulasi Rao is claiming to be a legatee of the land under a will dated 9-9-1963) and Munganda Venkataratnam (Petitioner in W.P.No.19906 of 2000) in respect of Ac.18.69 cents of land, and is himself enjoying the said land, and that all the assignees in whose names those lands are assigned are neither residents nor natives of Chintalapudi village and so pattas issued in their names may be cancelled. Thereafter, the Revenue Divisional officer, after conducting an enquiry, issued orders resuming the land assigned to the aforesaid assignees, and directed the second respondent to take possession of the land from S.Tulasi Rao, vide his Order D.Dis.No.1263/98 dated 16.12.1998, on the ground that the assignees failed to produce evidence to show that they are cultivating the land, when in fact, it is S.Tulasi Rao that is enjoying the entire land, and since an assignee Sriramula Satyanarayana is no other than the paternal uncle of Tumma Venkataratnam, the father-in-law of S.Tulasi Rao, and since the other assignee Mukkamala Eswaramma is no other than the aunt and the other assignee Mungada Venkataratnam who is but a relative of the wife of S. Tulasi Rao. Aggrieved by the said Order of the Revenue Divisional Officer, petitioners jointly preferred an appeal to the first respondent, who while setting aside the orders of the Revenue Divisional Officer canceling the pattas, on the ground that suo motu powers to cancel a patta cannot be invoked by the Revenue Divisional Officer

after a lapse of 12 years, directed the second respondent to make “discreet enquiry afresh and submit a status report of the assigned land and the assignees as on the date, with all material evidence to him”. Feeling aggrieved by the aforesaid direction of the first respondent, to the second respondent to conduct discreet enquiry, these writ petitions are filed by the appellants before the first respondent.

3. The main contention of the learned counsel for the petitioners is that since first respondent has no jurisdiction to entertain an application for cancellation of patta after three years of their issuance, in view of the Board Standing Order (B.S.O.) 15, order of the first respondent impugned in these petitions directing the second respondent to make discreet enquiries into the validity of assignments, and also the status of the assignees, is liable to be set aside. According to him, Government only has the power to review the order of assignment and so even if the assignments were fraudulently obtained they can only be cancelled by the government but not by the first respondent. He placed strong reliance on G. MUNILAKSHMAMMA V. THE DISTRICT COLLECTOR, CHITTOOR DISTRICT; D. GANGADHAR V. CH. CHAKKARA REDDY; P. ANASUYAMMA V. THE COMMISSIONER OF LAND REVENUE, GOVERNMENT OF ANDHRA PRADESH; SURYA KUMARI V. GOVERNMENT OF ANDHRA PRADESH in support of his contentions. .

4. The main contention of the learned Assistant Government Pleader is that since petitioner in W.P.No.19907 of 2000, while working in the Revenue Department, obtained pattas, by playing fraud, in the names of his close relatives who are not either natives nor residents of Chintalapudi village, and since he himself is in actual enjoyment of the entire land, and since that fact came to light only when his brother gave a representation to the first respondent about the fraud played by Tulasi Rao, petitioners, by no stretch of imagination, can be said to be aggrieved by the observations in the order of the first respondent because, it is his contention, the proceedings were initiated under the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act 9 of 1977 (for short ’the Act’), under which first respondent has jurisdiction to entertain the appeals and can cancel the assignments, if they are found to be irregular.

5. On my direction, the learned Assistant Government Pleader produced the relevant file and I have gone through the same.

6. I am unable to agree with the contention of the learned Assistant Government Pleader that first respondent, being the appellate authority, has the power to cancel the assignments made in favour of assignees and can pass appropriate orders, because, the impugned proceedings were not initiated under the provisions of the Act. So the Act has no relevance in deciding these petitions.

7. The file produced by the learned Assistant Government Pleader shows that on the basis of the representation received from the brother of Tulasi Rao, the Revenue Divisional Officer conducted an enquiry and found that the said Tulasi Rao, taking advantage of his employment in the Revenue Department, had fraudulently obtained pattas in the names of his relatives who are not residents of the village and is actually enjoying all the assigned lands. It is for that reason he passed orders cancelling the pattas. Questioning the said order of cancellation, petitioners filed a joint appeal before the first respondent, who allowed the appeals and set aside the order of cancellation of pattas passed by the Revenue Divisional Officer with some observations, which are unpalatable to the petitioners and hence these petitions.

8. In my considered opinion, these writ petitions, even prima facie have no merit, because first respondent, as custodian and person having a duty and authority to protect and safe guard the properties belonging to the Government, has a right to call for information relating to the properties belonging to, or which once upon a time belonged to, the government irrespective of the fact that he himself may or may not have the power or authority to pass orders with regard to those properties. He can, and in fact has a duty to, send a report to the higher and the concerned authorities about the irregularities and illegalities with respect to government properties that come to his notice, for appropriate action being taken at their end. So, even assuming that first respondent ceased to have the authority to cancel the assignments obtained by the employees in the Revenue Department by playing fraud, he can, and has a duty to, send a status report to the authority concerned, with a request to take proper action. It is only when such an action is initiated by the concerned authority can the

petitioners be said to be aggrieved, and would get a cause of action to invoke the jurisdiction of this court. The anxiety and urgency with which petitioners came to this Court to forestal an investigation into the fraud allegedly played by Tulasi Rao is a clear indication that they apprehend the irregularities coming to light, which might result in cancellation of the assignments, reminding me of the proverb ‘

9. In my considered opinion, none of the decisions relied upon by the learned counsel for the petitioners have application to the facts of this case. Since SURYA KUMARI’s case (4 supra) and
P. ANASUYAMMA’s case (3 supra) relied on by the learned counsel for the petitioners, are short noted decisions, I sent for the full reports of those decisions and have gone through those judgments. In SURYA KUMARI’s case (4 supra), petitioner therein was assigned Ac:3-40 cents on 4-10-1969 on the basis that she is a landless poor person. To a show cause notice dated 24-9-1971 of the Revenue Divisional Officer as to why the assignment in her favour be not cancelled, she submitted her explanation, but her patta was cancelled by the Revenue Divisional Officer. Appeal and Revision preferred by her to the District Revenue Officer and to the government were dismissed. Therefore, she filed W.P.No.2197 of 1974 questioning the cancellation of her patta, which was disposed of by a learned Judge of this Court on 18-11-1975, observing that the Revenue Divisional Officer was not having jurisdiction to cancel the assignment made by the Tahsildar by invoking the powers or authority under B.S.O 15(15) after expiry of the period prescribed therein, and quashed the orders of the Revenue Divisional Officer, District Revenue Officer and the Government. Thereafter, Government issued a show cause notice to the petitioner therein why the assignment in her favour cannot be cancelled for the reasons mentioned earlier in the order dismissing her revision. When that notice was questioned the learned Judge while observing that by virtue of BSO 15(15) government does have the *suo motu* power to take action for cancellation, dismissed the petition, because the Government, in the memo impugned in that petition, gave a direction to the Collector to assign some other land to her, subject to her eligibility.

10. Petitioner in ANASUYAMMA's case (3 supra), and another person were assigned land in February, 1970. On 6-7-1982 the Collector issued a notice to both of them to show cause why the assignments made in their favour should not be cancelled for their misrepresentation and suppression of material facts, for their obtaining assignments. After considering their explanations Collector cancelled their pattas on 20-3-1981. Appeals preferred by them to the Commissioner of Land revenue were dismissed on 25-8-1987. Hence, they filed writ petitions in this Court questioning the cancellation of their pattas. The learned Judge allowed the said writ petitions on the ground that such power to cancel pattas, obtained by misappropriation or fraud etc., can be made within three years of the grant but not beyond three years.

11. The above decision has no application to the facts of this case because that case relates a cancellation of patta in the year 1981 i.e., prior to the amendment of BSO 15(18) by virtue of G.O.Ms.No.192 Revenue (B) dated 2-8-1985, whereby the period of three year limitation stood deleted. After the said amendment BSO 15(18) reads:

> "(18) Revision:- (1) The order of the authority making the assignment, if no appeal is presented, or of the appellate authority, if an appeal is disposed of, is final and no second appeal shall be admitted. But if, at any time after the passing of the original or appellate decision, the collector is satisfied that there has been a material irregularity in the procedure or that the decision was grossly inequitable or that it exceeded the powers of the officer, who passed it or that it was passed under a mistake of fact or owing to fraud or misrepresentation he may set aside, cancel or in any way modify the decision passed by an officer subordinate to him. No order should be reversed or modified adversely to the respondent without giving the respondent a notice to show cause against the action proposed to be taken adversely to him.
>
> (2) The State Government, may, at any time, either suo moto or on application made to them, call for and examine the records relating to any decision or order passed or proceeding taken by any authority or office subordinate to them under the preceding sub-paragraph for the purpose of satisfying themselves as to the legality or property of such decision or order or as to the regularity of such proceeding and pass such order in reference thereto as they think fit. The Government may stay the execution of any such decision order or proceeding pending the exercise of their powers under this sub-paragraph in respect thereof."

From BSO 15(18) extracted above it is clear that power of cancellation of assignment can be exercised either by the Collector or by the State government at any time subject to the conditions mentioned therein.

12. The contention of the learned counsel for the petitioners that in as much as the BSO 15(18) empowers the Collector only, but not the Joint Collector, to cancel the patta for the grounds mentioned therein, first respondent had no jurisdiction to order a discreet enquiry into the validity of the assignments is, in a way, a self harming contention for two reasons (i) it amounts blowing hot and cold in the same breath. If first respondent really has no power or authority to deal with the appeal preferred by the petitioners to him the entire order passed by him, but not merely the observation with directions to the second respondent towards the end of the order, will have to be set aside. So petitioners cannot be heard to say that that portion in the order which is in their favour, though passed without jurisdiction, can stand and the other portion of the order which is unfavourable to them has to be set aside, (ii) Government of Andhra Pradesh through G.O.Ms.No.77 Revenue, dated 22-1-1968 (published in part-I of the Andhra Pradesh Gazette, dated 10-02-1968 at pages 223 to 226) issued orders distributing the work subject wise among the District collectors, Joint Collectors and Personal Assistants to the District Collectors, as per which, all the correspondence in the Collector's Office has to be carried out in the name of the District Collector, and the subject relating to 'assignment and transfer of land' is to be dealt with by the Joint Collector. So, first respondent by virtue of the said G.O., has the authority to deal with all the subjects relating to assignment of land, which includes cancellation of assignment also.

13. D. GANGADHAR's case (2 supra) is of no help to decide these cases because assignment in that case was cancelled under the provisions of the Act, for violation of conditions of grant.

14. In G. MUNILAKSHAMMA's case (1 supra), Mandal Revenue Officer passed orders cancelling the patta. Holding that the Mandal Revenue Officer has no power to cancel the patta on the ground of suppression or misrepresentation of

material facts and since Collector only has such power, order of cancellation of assignment passed by the Mandal Revenue Officer was set aside. The said decision has no application to the facts of this case.

15. Since in para 25 of **K. RATTAMMA V. G. KOTAIAH** it is held that B.S.Os are only executive instructions for the guidance of the revenue officials and nothing more, Prima facie BSO 15(18) relied on by the petitioners does not confer any right on them to cling on to the assignments made because it is well known that fraud vitiates everything. Recently the Apex Court, in **STATE OF ANDHRA PRADESH V. T. SURYACHANDRA RAO** after discussing the entire case law on the subject of fraud, held that no order obtained by fraud can be sustained. It is also well known that in case of fraud the period of limitation would commence from the date of discovery of fraud. Therefore, merely because a person could successfully shield the fraud played by him in obtaining assignment of Government land for several years, he cannot be heard to say that in view of the lapse of time the assignment in his favour cannot be cancelled. When power is vested in an authority to do an act, and if that authority exercises that power erroneously due to the fraud played on it, that authority has the implied power to undo its earlier act, performed by it as a result of the fraud played on it. First respondent without correctly appreciating the law and facts seems to have erroneously set aside the order cancelling the assignments but since that part of the order of first respondent, setting aside cancellation of assignments, became final, I do not wish to interfere with that part of the order of the first respondent.

16. Since it is specific case of the complainant that his brother, S. Tulasi Rao, taking advantage of his employment in the Revenue Department, had, by playing fraud, obtained pattas in the names of his relatives though they are not residents of the village and is enjoying and cultivating the said lands all by himself, that fact does need verification. If after verification the same is found to be true, such assignments are liable to be cancelled since first respondent, who is vested with the power of Collector, in cases relating to assignment of land, is competent to direct his subordinate officer to make an enquiry and submit a status report for further action by him.

17. Therefore, I find no grounds to interfere with the order of the first

respondent impugned in these writ petitions, and hence, all the writ petitions are dismissed with costs.

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29-08-2005

Note:

L.R. copy to be marked.

sj